

(2) The number of engines known or estimated to be affected by the emission-related defect and an explanation of the means by which this number was determined;

(3) The number of engines actually receiving repair under the plan; and

(4) The number of engines determined to be ineligible for remedial action due to a failure to properly maintain or use such engines.

§ 90.805 Reports, voluntary recall plan filing, record retention.

(a) Send the defect report, voluntary recall plan, and the voluntary recall progress report to: Group Manager, Engine Compliance Programs Group, (6403-J), Environmental Protection Agency, Washington, DC 20460.

(b) Retain the information gathered by the manufacturer to compile the reports for not less than five years from the date of the manufacture of the engines. The manufacturer must make this information available to duly authorized officials of the EPA upon request.

[60 FR 34598, July 3, 1995, as amended at 64 FR 15251, Mar. 30, 1999]

§ 90.806 Responsibility under other legal provisions preserved.

The filing of any report under the provisions of this subpart does not affect a manufacturer's responsibility to file reports or applications, obtain approval, or give notice under any provision of law.

§ 90.807 Disclaimer of production warranty applicability.

(a) The act of filing an Emission Defect Information Report is inconclusive as to the existence of a defect subject to the warranty provided by subpart L of this part.

(b) A manufacturer may include on each page of its Emission Defect Information Report a disclaimer stating that the filing of a Defect Information Report pursuant to these regulations is not conclusive as to the applicability of the warranty provided by subpart L of this part.

§ 90.808 Ordered recall provisions.

(a) Effective with respect to Phase 2 small SI engines:

(1) If the Administrator determines that a substantial number of any class or category of engines, although properly maintained and used, do not conform to the regulations prescribed under section 213 of the Act when in actual use throughout their useful life (as defined under § 90.105), the Administrator shall immediately notify the manufacturer of such nonconformity and require the manufacturer to submit a plan for remedying the nonconformity of the engines with respect to which such notification is given.

(i) The manufacturer's plan shall provide that the nonconformity of any such engines which are properly used and maintained will be remedied at the expense of the manufacturer.

(ii) If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing, the Administrator withdraws such determination of nonconformity, the Administrator shall, within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (a)(2) of this section. The manufacturer shall comply in all respects with the requirements of this subpart.

(2) Any notification required to be given by the manufacturer under paragraph (a)(1) of this section with respect to any class or category of engines shall be given to dealers, ultimate purchasers, and subsequent purchasers (if known) in such manner and containing such information as required in subparts I and M of this part.

(3)(i) Prior to an EPA ordered recall, the manufacturer may perform a voluntary emissions recall pursuant to regulations at § 90.804. Such manufacturer is subject to the reporting and recordkeeping requirements of § 90.805.

(ii) Once EPA determines that a substantial number of engines fail to conform with the requirements of section 213 of the Act or this part, the manufacturer will not have the option of a voluntary recall.

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(b) The manufacturer bears all cost obligation a dealer incurs as a result of a requirement imposed by paragraph (a) of this section. The transfer of any such cost obligation from a manufacturer to a dealer through franchise or other agreement is prohibited.

(c) Any inspection of an engine for purposes of paragraph (a)(1) of this section, after its sale to the ultimate purchaser, is to be made only if the owner of such vehicle or engine voluntarily permits such inspection to be made, except as may be provided by any state or local inspection program.

[64 FR 15251, Mar. 30, 1999]

Subpart J—Exclusion and Exemption of Nonroad Engines from Regulations

§ 90.901 Applicability.

The requirements of subpart J are applicable to all nonroad engines and vehicles subject to the provisions of subpart A of part 90.

§ 90.902 Definitions.

The definitions in subpart A of this part apply to this subpart. The following definitions also apply to this subpart:

Exemption means exemption from the prohibitions of § 90.1003.

Export exemption means an exemption granted under § 90.1004(b) for the purpose of exporting new nonroad engines.

National security exemption means an exemption granted under § 90.1004(b) for the purpose of national security.

Manufacturer-owned nonroad engine means an uncertified nonroad engine owned and controlled by a nonroad engine manufacturer and used in a manner not involving lease or sale by itself or in a vehicle employed from year to year in the ordinary course of business for product development, production method assessment, and market promotion purposes.

Testing exemption means an exemption granted under § 90.1004(b) for the purpose of research, investigations, studies, demonstrations or training, but not including national security.

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§ 90.903 Exclusions, application of section 216 (10) and (11) of the Act.

(a) For the purpose of determining the applicability of section 216(10) of the Act, an internal combustion engine (including the fuel system) that is not used in a motor vehicle is deemed a nonroad engine, if it meets the definition in subpart A of this part. For the purpose of determining the applicability of section 216(11) of the Act, a vehicle powered by a nonroad engine is deemed a nonroad vehicle, if it meets the definition in subpart A of this part.

(b) EPA will maintain a list of models of nonroad engines and models of nonroad vehicles that have been determined to be excluded because they are used solely for competition. This list will be available to the public and may be obtained by writing to the following address: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division (6403J) Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(c) Upon written request with supporting documentation, EPA will make written determinations as to whether certain engines are or are not nonroad engines. Engines that are determined not to be nonroad engines are excluded from regulations under this part.

[61 FR 52102, Oct. 4, 1996]

§ 90.904 Who may request an exemption.

(a) Any person may request a testing exemption under § 90.905.

(b) Any nonroad engine manufacturer may request a national security exemption under § 90.908.

(c) For nonroad engine manufacturers, nonroad engines manufactured for export purposes are exempt without application, subject to the provisions of § 90.909.

(d) For eligible manufacturers, as determined by § 90.906, manufacturer-owned nonroad engines are exempt without application, subject to the provisions of § 90.906.

(e) For any person, display nonroad engines are exempt without application, subject to the provisions of § 90.907.